

Jennifer K. Stone
Attorney at Law

1600 Williams St., Suite 5200 T: 803.401.2903
Columbia, SC 29201 F: 803.254.1731

jennifer.stone@att.com

January 22, 2009

The Honorable Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211


Re: Upstate Rental & Welding Supply Company v. BellSouth Telecommunications,
Incorporated d/b/a AT&T South Carolina
Docket No.: 2008-451-C

Dear Mr. Terreni:

Enclosed for filing is AT&T South Carolina's Answer and Motion to Dismiss in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this response as indicated on the attached Certificate of Service.

Sincerely,



Jennifer K. Stone

JKS/nml
Enclosure
cc: All Parties of Record
DMS #726518

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2008-451-C

IN RE:)
)
Upstate Rental & Welding Supply Company,)
Complainant/Petitioner,)
)
v.)
)
BellSouth Telecommunications, Inc.)
d/b/a AT&T South Carolina,)
)
Defendant/Respondent.)

AT&T SOUTH CAROLINA'S ANSWER AND MOTION TO DISMISS

Defendant/Respondent BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina ("AT&T South Carolina") hereby respectfully submits its Answer and Motion to Dismiss on the grounds that AT&T South Carolina has offered, and remains willing, to credit Complainant/Petitioner Upstate Rental & Welding Supply Company's ("Upstate Rental's") account in the amount required pursuant to its General Subscriber Service Tariff, the Commission has limited jurisdiction over Upstate Rental's claims, and that the Complaint is not signed by an attorney authorized to practice in South Carolina.

**SUMMARY OF UPSTATE RENTAL'S ALLEGATIONS
AND REQUESTS FOR RELIEF**

In its Complaint, Upstate Rental alleges that AT&T South Carolina mistakenly changed Upstate Rental's telephone number to an unlisted number, resulting in the number being excluded from the white pages, the yellow pages, and directory assistance.¹ Upstate Rental states that although the problem has been corrected, the omission of the

¹ See Complaint at 1-2.

listings in the directory for a year has “impacted [their] business tremendously”.² Upstate Rental further states that AT&T South Carolina has offered to credit its account in the amount of \$500.00, but states that “we probably loss that much in several days business. We were told that was the best that they could do”.³ Upstate Rental requests a hearing before the Commission.

AT&T SOUTH CAROLINA’S RESPONSE TO FACTUAL ALLEGATIONS

In response to these allegations, AT&T South Carolina admits that in the process of changing the billing for Upstate Rental's telephone and fax numbers, it mistakenly changed Upstate Rental’s telephone number to an unlisted number. AT&T South Carolina asserts that when it was informed of the mistake, AT&T South Carolina changed Upstate Rental’s telephone number to a listed number. At the time the telephone number was changed to a listed number, the number again became available to those calling AT&T South Carolina’s directory assistance and on yellowpages.com.⁴ In addition, AT&T South Carolina asserts that it offered to credit Upstate Rental’s account in the amount of \$500.00. AT&T South Carolina remains willing to credit Upstate Rental’s account in that amount.

COMMISSION’S JURISDICTION

Upstate Rental alleges that its listing was improperly omitted from the white pages portion of the directory. AT&T South Carolina’s liability for directory errors in the white pages is limited by Section A2.5.9 of its General Subscriber Service Tariff. That section limits AT&T South Carolina’s liability to a maximum of \$500.00 when a

² See Complaint at 2.

³ See Complaint at 2.

⁴ This telephone number’s current listed name is “Upstate Rental Supplies” rather than “Upstate Rental and Welding Supplies”. AT&T South Carolina is willing to work with Upstate Rental to insure that the listed name appears as desired by Upstate Rental.

white pages listing has been omitted and when no additional fee has been paid by the subscriber for the listing. As Upstate Rental states in its Complaint, AT&T South Carolina has offered to credit its account in the amount of \$500.00, and AT&T South Carolina remains willing to do so. Because AT&T South Carolina has offered, and continues to offer, to credit Upstate Rental's account in the amount of \$500.00, AT&T South Carolina respectfully submits that Upstate Rental's claims regarding the omission of its white pages listing should be dismissed.

Upstate Rental further alleges that its listing was improperly omitted from the yellow pages portion of the directory. However, "[p]ublic utilities, as part of its duties, are not required to provide yellow pages advertising" and the Commission has no jurisdiction over yellow pages advertising.⁵ Therefore AT&T South Carolina respectfully submits that Upstate Rental's claims related to the yellow pages should be dismissed.

Although Upstate Rental does not request a specific amount of monetary damages in its Complaint, it references its alleged loss of business due to the omission of the listings in the directory. To the extent Upstate Rental requests monetary damages, the Commission should dismiss this request for relief because it lacks jurisdiction to consider it.⁶

⁵ See *Pride v. Southern Bell Tel. and Tel. Co.*, 138 S.E.2d 155, 157 (SC 1964). An affiliated entity, not AT&T South Carolina, publishes the yellow pages directory that is the subject of Upstate Rental's Complaint. In this instance, however, Upstate Rental's failure to name this affiliated entity as a party to this Docket is moot because the Commission has no jurisdiction over its claims involving the yellow pages.

⁶ See Order Denying [Various Motions] and Partially Dismissing Complaint, *In Re: Sandi Perry v. BellSouth Telecommunications, Inc.*, Order No. 2007-277 in Docket No. 2006-294-C at 2-3 (April 23, 2007). Cf. *Public Service Commission of Oklahoma v. Norris Sucker Rods*, 917 P.2d 992, 996 (Okla. Ct. App. 1996) ("the Commission is not a court of general jurisdiction and cannot enter a money judgment against a party."); *Carr. V. Cincinnati Bell, Inc.*, 651 S.W.2d 126, 128 (Ky. Ct. App. 1983) (the Kentucky

ATTORNEY REPRESENTATION

Upstate Rental must be represented by an attorney in this Docket because it is a corporation. The Commission's Rules of Practice and Procedure allow an individual to represent himself or herself in an individual capacity in proceedings before the Commission.⁷ Under these Rules, however, only an attorney authorized to practice law in South Carolina is allowed to represent a corporation such as Upstate Rental in proceedings before the Commission.⁸ Upstate Rental is not represented by an attorney – instead, the Complaint was signed by Charles and Kay Farmer, who, upon information and belief, are not attorneys authorized to practice law in South Carolina.


Commission lacks legal authority to award monetary damages); *Southern Bell v. Mobile America Corp.*, 291 So. 2d 199 (Fla. 1974)(“Nowhere . . . is the PSC granted authority to enter an award of money damages (if indicated) for past failures to provide telephone service meeting the statutory standards; this is a judicial function within the jurisdiction of the circuit court”); *Muskegon Agency v. General Tel. Co.*, 65 N.W.2d 748, 752 (Mich. 1954)(“The [Michigan] Commission has no jurisdiction to award plaintiff damages or to reimburse plaintiff for its losses. Only a court, in accordance with due process, can constitutionally award damages in a civil action.”); *In re: Amended Complaint and petition of John Charles Heekin against Florida Power & Light Company*, Docket No. 981923-EI, Order No. PSC-99-1054-FOF-EI (May 24, 1999) (Florida Commission dismissed a complaint seeking monetary damages against a public utility for alleged eavesdropping, voyeurism, and damage to property because the complaint involved “a claim for monetary damages, an assertion of tortious liability or of criminal activity, any and all of which are outside this Commission’s jurisdiction.”).Order, *In Re: Bart MacFarland, DMD v. Kentucky Utilities Company*, Case No. 97-012 at 2 (January 21, 1997)(The Kentucky Commission “does not possess the authority to award compensatory or punitive damages.”).

⁷ S.C. Code Regs. §103-804T.

⁸ *Id.*

For the reasons stated above, AT&T South Carolina respectfully requests that the Commission dismiss the Complaint in this Docket.

Respectfully submitted,



JENNIFER K. STONE
1600 Williams Street, Suite 5200
Columbia, South Carolina 29201
Telephone: (803) 401-2903

ATTORNEY FOR RESPONDENT
AT&T SOUTH CAROLINA

Columbia, South Carolina
Dated: January 22, 2009

726515

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina ("AT&T") and that she has caused AT&T South Carolina's Answer and Motion to Dismiss in Docket No. 2008-451-C to be served upon the following on January 22, 2009.

C. Lessie Hammonds, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201
(Office of Regulatory Staff)
(Electronic Mail)

Jocelyn G. Boyd, Esquire
Staff Attorney
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(Electronic Mail)

F. David Butler, Esquire
Senior Counsel
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(Electronic Mail)

Joseph Melchers
Chief Counsel
S.C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(Electronic Mail)

Kay Farmer
Upstate Rental and Welding Supply Company
2303 M. Hwy 101
Greer, South Carolina 29651
(Certified Mail & Facsimile)


Nyla M. Landry

DM5 #726516